

ADMINISTRATIVE PROCEDURES ACT - ORDINANCES

Ordinance # 04-100-07

Article I. Purpose; Findings

1.01. *Purpose.* The purpose of this Ordinance is to provide guidance and format to the development of ordinances of the Tribe; to manage the process of the development of ordinances of the Tribe; and to allow for the greatest amount of input from members and community affected by the development of ordinances of the Tribe.

1.02. *Findings.* The Tribal Council finds that –

a. It is delegated responsibility, in Article IV, Section 7(a) of the Constitution, “to exercise the inherent powers of the Little River Band by establishing ordinances through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members;”

b. It is further delegated responsibility, in Article IV, Section 7(j) of the Constitution, “to take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe.

c. It is necessary to set forth directions and processes for the adoption of ordinances of the Tribe which allow for notice and comment prior to the adoption and amendment of such ordinances.

d. It is necessary to provide direction and processes for the collection and publication of ordinances of the Tribe in order to provide for adequate notice to the public regarding the adoption, repeal, amendment or application of ordinances.

Article II. Adoption; Amendment; Repeal

2.01. *Adoption.* This ordinance is adopted by the Tribal Council by resolution # 04-1110-447.

2.02. *Amendment.* This ordinance may be amended by the Tribal Council in accordance with the Constitution and the procedures set forth herein.

2.03. *Repeal.* Prior to repeal of this Ordinance, the Tribal Council shall post notice of the intent to repeal this ordinance at two weeks prior to such action. Notice shall be posted in the Tribal buildings as may be identified in the Tribal Council Meeting Procedures Ordinance.

2.04. *Short Title.* This Ordinance may be cited as the Administrative Procedures Act - Ordinances, or APA-O.

2.05. *Severability Clause for this Act.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General Definitions.* As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. *Ordinance* means a law adopted by the Tribal Council intended to give general direction over a subject matter or jurisdiction. An ordinance may contain specific direction where necessary.

3.03. *Person* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any legal or commercial entity.

Article IV. Ordinances

4.01. *General.* This Article shall govern the adoption, amendment and repeal of ordinances of the Tribe. It is the intent of the Tribal Council that substantial compliance, not absolute or complete compliance, with this Article shall be required in the adoption or amendment of any ordinance after adoption of this ordinance.

4.02. *Format.* Ordinances shall be identified by a title that clearly sets forth the subject of the ordinance which is followed by the ordinance number. Thereafter, all ordinances shall be set forth as follows. Each ordinance shall be broken into “Articles” and which is made up of “sections.” Articles shall be numbered consecutively, and sections shall be numbered individually, with the Article number first, followed by a period, and the section number thereafter. Example: Article I, and section 1.01. Each section may be broken into the following numbered subsections – section 1.01(a)(1)(A)(i).

a. *Article 1. Purpose; Findings.* This Article shall identify the general purpose of the ordinance and, in a separate section, the legislative findings or history for developing and adopting the ordinance.

b. *Article 2. Adoption; Amendment; Repeal; Severability.* This Article shall contain four sections.

1. *Section 2.01. Adoption.* This section shall identify the adoption history, and shall include references to all resolutions and motions of the Tribal Council which affects the ordinance.

“This Ordinance is adopted by Tribal Council resolution # _____, and subsequently amended by [action].”

2. *Section 2.02. Amendment.* This section shall identify any limitations on amending the ordinance which are more than those required in this ordinance.

“This Ordinance may be amended in accordance with the procedures set forth in the APA-O, [identify additional restrictions/limitations].”

3. *Section 2.03. Repeal.* This section shall identify any limitations on repealing the ordinance which are more than those required in this ordinance.

“This Ordinance may be repealed in accordance with the procedures set forth in the APA-O, [identify additional restrictions/limitations/requirements].”

4. *Section 2.04. Severability.* This section shall identify severability language, if necessary.

“If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.”

c. *Article 3. Definitions.* This Article shall contain all words or phrases that have a specified meaning within the Ordinance. All words or phrases defined shall be numbered separately, and placed in alphabetical order. The first section shall be as follows.

“3.01. *General.* As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

d. *All Other Articles.* The remainder of the Ordinance shall be organized from the general to the specific and contain separate Articles and sections as may be necessary to clearly identify the subject and intent of the legislation.

4.03. *Notice.* Prior to adoption or amendment of ordinances, the Tribal Council shall present the draft

ordinance for Public Comment.

a. *Posting Notice.* The Tribal Council shall present a notice of request for Public Comment which shall be posted on the Tribal Council's "Public Comment" internet site for Ordinances, and physically at the Little River Band Community Center; Little River Tribal Office; Little River Band Health Center; and Little River Band Downtown Office Building by presenting such notice to the main receptionist or other person responsible for posting notices for the building. The Public Comment period shall be no less than 30 days.

b. *Comments.* The Tribal Council shall have all comments made included in a draft of the ordinance which annotates all comments. Such annotations may include responses, corrections, explanations or other comments. The annotated ordinance shall be made available for copying by interested parties.

c. *Form of Comments.* Individuals may present written testimony that may be received via fax, e-mail, regular mail, or other method which can reasonably be read and received on or before the closure of the Public Comment period.

4.04. *Final Work Session.* The Tribal Council shall review the annotated ordinance resulting from the Public Comment period in a final work session. At which time, approval of final revisions, additions, or deletions will be made to the ordinance.

4.05. *Adoption.* The Tribal Council shall adopt ordinances by resolution which set forth the following minimum information.

a. *Whereas Sections.* In the Whereas sections, the date of posting notice and the date the final work session was held and the subject matter of the ordinance.

b. *Resolve Sections.* In the Resolve sections, the following information in separate resolves.

1. The name of the ordinance to be adopted.

2. The date the ordinance will be effective.

3. The parties who shall need specific notice of such ordinance for implementation purposes.

4.06. *Amendment.* The Tribal Council shall adopt amendments to ordinances by resolutions that contain substantially the same information as set forth in section 5.05. Further, such resolution shall contain, in the first Resolve, the text of all amendments being adopted.

Article V. Emergency Action

5.01. *Emergency.* In the interests of protecting the health, safety, or welfare of the Tribe, its members or the community, the Tribal Council may take emergency action to amend or adopt an ordinance for a six month period. An emergency must be imminent and not allow the normal rule making processes to be conducted without causing or resulting in danger to the health, safety or welfare of the Tribe, its members or the community. Such emergency action may include injury to person, property, business, or finances.

5.02. *Form of Action.* The Tribal Council, upon presentation of a request to amend or adopt an ordinance, shall bring such matter forward at a regular, special or emergency meeting in a timely manner. No emergency action can take place without a resolution being presented. Such resolution shall clearly state the nature of the emergency and the potential harm that could be caused by a failure to act, and clearly stated amendments or directions which will be taken to avoid or lessen the potential harm. No resolution may allow an emergency action to be in effect for longer than six months.

5.03. *Follow-up on Emergency Action.* In all circumstances, the Tribal Council shall review the emergency action during the six month period to determine the effect of the emergency action, whether the action should be made permanent, and receive comments by affected persons.

5.04. *Extension.* The Tribal Council may extend an emergency action for an additional six months

where it is in the best interests of the Tribe to do so. No emergency action shall be in place for longer than one year.

Article VI. Publication

6.01. *General.* The Tribal Council shall cause to be published, either in paper or electronic version, or both, a collection of all ordinances, and regulations of the Tribe which shall be titled the “Little River Band of Ottawa Indians Tribal Code,” and may be referred to as the “Tribal Code.” If made available in paper version, the Code shall be available to the general public and shall be re-issued on a bi-annual basis.

6.02. *Organization.* The Tribal Code shall be organized into two parts – ordinances and regulations. The parts shall be further organized as follows.

a. *Ordinances.* This part shall be organized in titles numbered with the following subject matters –

- 100 - Government Operations;
- 150 - Commissions; Governmental Entities;
- 200 - Membership; Election;
- 300 - Judiciary;
- 400 - Law and Order;
- 500 - Environmental;
- 550 - Building; Construction;
- 600 - Employment;
- 700 - Programs;
- 800 - Business; Finance;
- 900 - Family.

Additional titles may be added from time to time as determined necessary by Tribal Council.

b. *Regulations.* Regulations shall be organized as set forth for ordinances, provided that the title numbers shall be preceded by the letter “R,” for example – R100, R200, etc. Where no regulations exist, there shall be placed a blank sheet with the following text – “There are no regulations promulgated for this Title in the Tribal Code.”